



Janet Napolitano
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov



Stephen A. Owens
Director

August 7, 2008

Mr. Benjamin H. Grumbles, Assistant Administrator
Office of Water
U.S. EPA
1200 Pennsylvania Avenue, NW, Mail Code 4101M
Washington, D.C. 20460

Dear Mr. Grumbles:

I am following up on our conversation on August 4 regarding the "Traditional Navigable Water" (TNW) designation for the Santa Cruz River made by the Los Angeles District Corps of Engineers (the District). As I indicated, the Arizona Department of Environmental Quality (ADEQ) supports the designation and appreciates the efforts of District regulatory staff to ensure Clean Water Act protections for the Santa Cruz River and its tributaries. We are deeply concerned that officials at the Army Corps of Engineers headquarters in Washington, D. C. are considering overturning the District's TNW determination for the Santa Cruz River. We urge the EPA to support the TNW designation.

ADEQ strongly opposes any effort to limit Clean Water Act jurisdiction over the Santa Cruz River and its tributaries. These important surface waters have been protected under the Clean Water Act at least since the 1972 Amendments. Significant issues have been created by the joint *Rapanos* Guidance issued by the Corps and EPA last summer, which inappropriately applies the holdings of the *United States v. Rapanos* Supreme Court decision to streams (the *Rapanos* holding is applicable to wetlands). The application of the *Rapanos* Guidance to tributary streams ignores longstanding Corps and EPA regulations and applicable case law and therefore violates the Clean Water Act.

You asked about the applicability of the findings of the Arizona Navigable Stream Commission to the Corps' TNW designation of the Santa Cruz River. In short, the Commission's findings and authorities relate solely to whether Arizona streams were navigable *in fact* at Arizona statehood in 1912 and have nothing to do with a finding of navigability under the Clean Water Act. As you know, the standard of navigability under the Clean Water Act is "waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce" See 33 CFR Section 328.3 and 40 CFR Section 230.3. The District's designation is consistent with the Clean Water Act standard. Any suggestion that the Arizona Commission's findings govern Clean Water Act jurisdiction is simply incorrect.

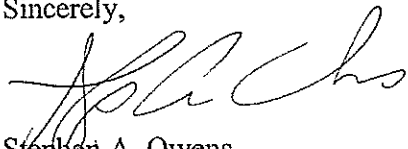
Northern Regional Office
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We continue to urge EPA and the Corps to rescind or revise the *Rapanos* Guidance, in accordance with our December 5, 2007 comments and this letter, to ensure that the Clean Water Act protections that have been in place in Arizona for the last 35 years remain in place.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Owens", written over a horizontal line.

Stephen A. Owens
Director

cc John Paul Woodley, Assistant Secretary, USACE



COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER
130 W. CONGRESS, TUCSON, AZ 85701-1317
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C. H. HUCKELBERRY
County Administrator

July 25, 2008

Colonel Thomas H. Magness
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Boulevard, Suite 1550
Los Angeles, CA 90017

Re: Regulatory Guidance Letter Dated 26 June 2008, No. 08-02

Dear Colonel Magness:

I am reviewing all aspects of Section 404 Clean Water Act applicability to Pima County post *Rapanos*. I have reviewed the Regulatory Guidance letter signed by Major General Don T. Riley referenced above.

I am having some difficulty finding a document that is referenced in paragraph A under Section 1. Purpose. Is the memorandum regarding a Supreme Court "Discussion" dated 19 June 2007 available or is this an incorrect reference? If you have this document please provide it so that I can continue my review of this matter.

As discussed in the Regulatory Guidance Letter, the County is considering submitting to 404 jurisdiction without site specific determination by the Corps. However, we would like assurance that this voluntary submission to 404 jurisdiction will not at the same time submit the County to 402 jurisdiction related to stormwater requirements, which I understand may be financially onerous and without substantial environmental benefit.

I would like to thank you in advance for your cooperation in this letter request.

Sincerely,

A handwritten signature in cursive script, appearing to read "C. Huckelberry", is written over a horizontal line.

C.H. Huckelberry
County Administrator

CHH/jj

Cc: Honorable Raúl Grijalva, Congressman
Honorable Gabrielle Giffords, Congresswoman, 8th District, Arizona
Honorable John Paul Woodley, Jr., Assistant Secretary of the Army
Honorable Chairman and Members, Pima County Board of Supervisors

